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In the

# Supreme Court of the United States

October Term, 1975

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LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND UNITED STEELWORKERS OF AMERICA, AFL-CIO,
*Petitioners,*

v.

WILLIAM J. USERY, SECRETARY OF LABOR,
*Respondent.*

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**On Writ of Certiorari to**
**The United States Court of Appeals**
**For the Seventh Circuit**

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## BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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## INDEX


Page

ARGUMENT ..... 1

CONCLUSION ..... 17


## CITATIONS


CASES:

*Brennan* v. *Local 5724, Steelworkers,* 489 F.2d 884 (6th Cir.) ..... 14

*Chimento* v. *Stark,* 353 F.Supp. 1211 (D.N.H.), affirmed, 414 U.S. 802 ..... 8

*Hadnott* v. *Amos,* 320 F.Supp. 107 (M.D. Ala.), affirmed, 401 U.S. 968 ..... 8

*Hodgson* v. *Steelworkers, Local 6799,* 403 U.S. 333 .... 4

*Kapanaux* v. *Ellison,* 419 U.S. 891 ..... 7

*Martin* v. *Lodge 636 Boilermakers,* 245 F.Supp. 375 (W.D. Pa.) ..... 14, 15

*Musicians* v. *Wittstein,* 379 U.S. 171 ..... 10

*Sununu* v. *Stark,* 383 F.Supp. 1287 (D. N.H.), affirmed 420 U.S. 958 ..... 7, 8

*Wirtz* v. *Glass Bottle Blowers Assn.,* 389 U.S. 463 .... 4

*Wirtz* v. *Hotel Employees, Local 6,* 391 U.S. 492 ..... 2, 4, 5, 6, 7, 9, 10, 12, 13, 16

STATUTES:

Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401, *et seq.:*

§ 401(e), 29 U.S.C. § 481(e) ..... 1, 2, 3, 5, 6, 9, 11, 12, 16

United States Constitution:

Article 1, §§ 2 and 3 ..... 8, 9

Article II, § 1 ..... 8, 9

| | | Page |
|---|---|---|
| 29 C.F.R. | § 452.13 | 9 |
| | § 452.36 | 9 |
| | § 452.37(b) | 9 |
| | § 452.38 | 6 |
| | § 452.39 | 9 |
| | § 452.41 | 9 |
| | § 452.42 | 9 |
| | § 452.43 | 9 |
| | § 452.44 | 9 |
| | § 452.46 | 3 |
| | § 452.47 | 3, 9 |
| | § 452.48 | 3 |
| | § 452.50 | 9 |

MISCELLANEOUS:

Department of Labor, *Union Constitutions and the Election of Local Union Officers* 12 (1965) ..... 10

*Federalist and Other Constitutional Papers,* Scott Foreman & Co., Chicago, 1898, Vol. I, No. LXII, p. 339 ..... 9

*Notes of Debates in the Federal Convention of 1787 Reported by James Madison,* W. W. Norton & Co., 1966, pp. 406-47 ..... 9

S. Rep. No. 187, 86th Cong., 1st Sess. (1959) ..... 4, 10, 14




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This brief *amicus curiae* is filed on behalf of the American Federation of Labor and Congress of Industrial Organizations, a federation of 111 national and international unions having a total membership of approximately 14,000,000 men and women, with the consent of the parties as provided for in Rule 42(2) of this Court's Rules.

## ARGUMENT

### I

Section 401(e) of the Labor-Management Reporting and Disclosure Act ("LMRDA") provides that labor organiza-

tions may set "reasonable qualifications uniformly imposed" for members in good standing who wish to be "candidates and to hold office." There is no contention in this case that the meeting attendance rule in question was not "uniformly imposed". Nor, it seems, has the Secretary of Labor or the Court of Appeals identified any reason why any member of Local 3489 who chose to do so was precluded from satisfying the requirements imposed.[1] Thus, the question of general import posed by this case is what principles are to govern a determination that a union candidacy eligibility requirement is "reasonable" when the requirement does not in terms render ineligible for office any member choosing to conform his behavior to that required for candidates.[2]

We believe that a careful consideration § 401(e), of the only case in this Court construing the reasonable qualifications for candidacy provision of that section of (*Wirtz* v. *Hotel Employees, Local 6,* 391 U.S. 492), and of Title IV of

[1] The Secretary has attacked the rule on its face, without attempting to demonstrate any reason why members in general could not satisfy the requirement if they so desired. Therefore, this case must be considered on the premise that there was nothing inherent in the rule or the circumstances surrounding its application which precluded members from qualifying under it. (See pp. 11-12, *infra.*)

[2] The rule at issue in *Wirtz* v. *Hotel Employees, Local 6,* 391 U.S. 402, was not this type of rule. Rather, a member fully dedicated to participation in union affairs and desiring to run for the offices covered by the *Hotel Employees* prior office-holding rule could be prevented from running not by any action or inaction on his part but by the actions of the electors and of those with the power to fill offices by appointment. While this distinction certainly does not render inapposite the basic principles stated in *Hotel Employees,* it does mean that the result in this case cannot follow *a fortiori* for the conclusion in *Hotel Employees.* (See pp. 12-17, *infra.*)



the LMRDA generally, demonstrates that a qualification on candidacy is reasonable if three basic standards are met: First, the qualification is such that it affords all members who desire to run for office an opportunity by his or her own action to meet the eligibility requirements.[3] Second, the qualification serves a legitimate interest of the union as an institution (where limiting the pool of potential candidates is not a legitimate interest in itself). Third, the qualification does not require a member seeking to satisfy it to unnecessarily disrupt his daily life or otherwise seriously inconvenience himself.

a. The relevant portion of § 401(e) on the one hand imposes as public law a requirement designed to assure broad access of union members to control of union affairs and on the other hand recognizes that members of unions, in the exercise of the very democrative self-government the Act is designed to assure, may perceive the need to set requirements for office-holding beyond mere membership in good standing. The structure of § 401(e) thus reflects in miniature an apparent tension reflected in the debate that formed Title IV of the Act, between setting absolute, detailed standards to which unions must adhere in order to prevent perceived abuses of power seen within the gover-

[3] We do not posit that a rule is *not* reasonable and therefore valid under § 401(e) if it does not meet this requirement. Rather, there may well be rules which serve union interests important enough, and whose impact is limited enough, that they are reasonable even though they cannot fairly be met by any determined member. See, e.g., 29 C.F.R. § 452.46, 452.47, 452.48. We suggest only that where this standard *is* met, an impact showing is irrelevant (see pp. 12-17, *infra*), and the union need demonstrate only some legitimate independent union interest served by the rule strong enough to outweigh any inconvenience it might pose.

nance of a few unions, and setting only minimal standards of democracy while permitting unions generally to set their own rules of self-government.[4] Yet the tension is more apparent than real. For, Congress legislated upon the presupposition that the two goals—assurance of union democracy and independence of union self-governance—were compatible. Title IV rests on the twin premises that "[g]iven the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully compe[illegible] o regulate union affairs," (S. Rep. No. 187, 86th Cong., 1st Sess., 5), and that "any attempt to prescribe detailed procedures and standards for the conduct of union business would weaken rather than strengthen the labor movement, * * * (*id.*)[5]

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[4] See, e.g., *Hodgson* v. *Steelworkers, Local 6799,* 403 U.S. 333, 338-339: "Examination of the relevant legislative materials reveals a clear congressional concern for the need to remedy abuses in union elections without departing needlessly from the longstanding congressional policy against unnecessary governmental interference with internal union affairs;" *Hotel Employees, supra,* 391 U.S. at 496: "[T]he congressional concern to avoid unnecessary intervention was balanced against the policy expressed in the Act to * * * [assure] that union elections would be conducted in accordance with democratic principles;" "The shocking abuses revealed by recent investigations have been confined to a few unions. The overwhelming majority are honestly and democratically run. In providing remedies for existing evils the Senate should be careful neither to undermine union self-government within the labor movement nor to weaken unions in their role as the bargaining representatives of employees." S. Rep. No. 187, 86th Cong., 1st Sess., 5 (1959). *See also id.*, pp. 5-7; *Wirtz* v. *Glass Bottle Blowers Assn.,* 389 U.S. 463, 470-471.

[5] There is no legislative history on the precise question of what qualifications on the right to run for and hold office are "reasonable".



In *Hotel Employees, supra,* this Court first addressed, in light of this general duality of Title IV, the considerations which are relevant to determining whether a given candidacy regulation is "reasonable". Noting that "revelations of corruption, dictatorial practices and racketeering in some unions investigated by Congress indicated a need to protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and through the election process, to keep the union leadership responsive to the membership," (*id.* at 497), the Court declared that "whether [a given regulation] is a 'reasonable qualification' * * * must be measured in terms of its consistency with the Act's command to unions to conduct 'free and democratic' union elections" (*id.* at 499). Because Congress' concern was to end "abuses of entrenched leadership" (*id.*), it interdicted in § 401(e) those "*unduly* restrictive candidacy qualifications" (*id.*; emphasis supplied) which can lead to this result. And, since "candidacy qualifications which substantially deplete the ranks of those who might run in opposition of incumbents" (*id.*) operate to entrench those incumbents, the *Hotel Employees* Court held that the rule before it in that case, which of necessity created a limited pool from which candidates could be drawn, was unreasonable under § 401(e).

The regulation before the Court in the instant case, however, does not "substantially deplete the ranks of those who might run in opposition to incumbents". Rather, any member willing to devote the time to union affairs prescribed by the rules can qualify as a candidate. Thus, the regulation here imposes no limit on the number of members opposed to the incumbents who can qualify; and, it neither discriminates against dissidents nor favors incumbents. In-

deed, such a requirement disqualifies no one. Any ineligible member assumes that status by choice and not because he is precluded from becoming a candidate. Since the Act was not designed to assure that any member or members actually become officers but, rather, that all union members who desire to become candidates for office will have an opportunity to do so, there is no threshold inconsistency between this rule and the permission of § 401(e), as there was in *Hotel Employees*.

(b.) This is not to say that a union may impose *any* requirement upon members desiring to become officers which it is not impossible for them to meet of their own accord. Rather, we believe that the reasonableness standard of § 401(e) imposes the requirement that any qualification set does forward a legitimate interest of the union. In addition, the rule must be reasonably adapted to the interest served, so that it does not require unnecessary disruption of the life of the potential candidate. Both of these requirements are implicit in the "reasonable" language of § 401 (e), and in the general goal of Title IV, "free and democratic" elections.

As the Secretary has consistently recognized, the central goal of a meeting attendance rule, "to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization," is a legitimate one (29 C.F.R. § 452.38). Indeed, such a rule is in furtherance of Title IV's purposes of promoting participation of rank-and-file members in union self-government and keeping leadership responsive to the members, for it encourages members generally to remain involved in union affairs continually and not merely at election time. Further, the rule assures that candidates for office, because they will have



participated in local union meetings on a continuous basis, will have been exposed to potential voters and, in all probability, have a "record" of positions on union matters upon which they can be judged. Thus, the purposes of a meeting attendance rule are not only legitimate, but are intended to assure precisely the effective, broad-based internal democracy sought by Congress in enacting the LMRDA.[6]

Indeed, the goals of a meeting attendance rule are quite similar to the purposes underlying durational residency requirements for candidates for state office, which have repeatedly been upheld by this Court in affirming federal district courts. *Sununu* v. *Stark*, 383 F. Supp. 1287 (D. N. H.) (seven year residency for state senatorial candidate), *affirmed*, 420 U.S. 958; *Kapanaux* v. *Ellison*,

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[6] The Court of Appeals seemed to read *Hotel Employees* as declaring such goals necessarily inadequate to justify any candidacy qualification. (520. F.2d, at 521.) But surely no such indictment of all rules passed to assure interested, committed officers was intended. As we show below, aiding the choice of the voters by minimal rules toward this end is not only consistent with but prevalent in American democracy.

Indeed, one would expect that such rules, when not "unduly restrictive," are precisely those Congress intended to permit. The problem with the *Hotel Employees'* rule, as the Court stressed, was that in practical effect "it was not possible to qualify except with the blessing of the [incumbents]" (391 U.S. at 502), and that the attempt to justify the rule as assuring well-qualified candidates was therefore equivalent to a declaration that assessment of qualifications was not within the competence of the electorate but, instead, had to be determined by a small, self-perpetrating group. Since conforming with the regulation here is subject to no control or influence by any other member or officer, it serves as a legitimate test of the quality sought and not one infected by a quality of elitism antithetical to democracy.

419 U.S. 891 (memorandum opinion) (five year residency for state gubernatorial candidate); *Chimento* v. *Stark*, 353 F. Supp. 1211 (D. N.H.) (seven year residency for state gubernatorial candidate), *affirmed*, 414 U.S. 802; *Hadnott* v. *Amos*, 320 F. Supp. 107 (M.D. Ala.), *affirmed*, 401 U.S. 968. These rules which have been adopted by almost every state, (see *Chimento*, 353 F. Supp. at 1217; *Sununu*, 383 F. Supp. at 1290) are designed to assure familiarity with the state's problems, to provide the electorate with an opportunity to become acquainted with and adjudge the candidate for a period prior to the election, and to assure that no individual without a demonstrated prior interest in the state can attempt to control its government. (*Chimento*, 353 F. Supp. at 1215; *Sununu*, 383 F. Supp. at 1290.)[7] And, some of these opinions (*Chimento, supra; Hadnott, supra.*) found the residency rules not only rational but necessary to interests deemed *compelling*, a more exacting standard than the word "reasonable" could possibly connote.

Also parallel in intent to the meeting attendance rules at issue here are the candidacy qualification rules for federal office contained in the United States Constitution, Article I §§ 2[8] & 3,[9] Article II § 1.[10] These qualifications were

[7] In analyzing the residency rules it has been noted, somewhat similarly to the discussion above regarding the rule here at issue, that such rules do not in actuality serve to disqualify anyone from holding office but, instead, impose a waiting period for eligibility. *Sununu*, 383 F. Supp., at 1293 (opinion by two of three judges).

[8] "No Person shall be a Representative who shall not have * * * been seven years a Citizen of the United States and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

[9] "No Person shall be a Senator who shall not have * * * been nine Years a citizen of the United States, and who shall not, when elected, be an Inhabitant of that state for which he shall be chosen."

[10] "No person * * * shall be eligible to the Office of President * * * who shall not have * * * been fourteen years a Resident of the United States."



imposed precisely to ascertain that the persons elected would be thoroughly familiar with the country whose laws they were to enact and enforce, and entirely dedicated to its best interests. See *Federalist and Other Constitutional Papers*, Scott Foreman & Co., Chicago, 1898, Vol. I, No. LXII, p. 339; *Notes of Debates in the Federal Convention of 1787 Reported by James Madison*, W. W. Norton & Co., 1966, pp. 406-47.

Since "Congress' model of democratic elections [in enacting Title IV] was political elections in this country" (*Hotel Employees*, 391 U.S., at 504), the fact that both the state and federal governments have perceived the need for rules which delay eligibility for public office until some specified minimum criteria indicating a commitment to and familiarity with the relevant jurisdiction has been met surely suggests that Congress regarded such a goal as consistent with union democratic self-government and, therefore, did not consider rules reasonably in furtherance of such goals as violative of § 401(e).[11]

[11] We do not suggest that meeting attendance rules are the precise equivalent of durational residency requirements in public elections, or that precise equivalency to a requirement for election to public office is necessary to sustain a union candidacy regulation as "reasonable." Rather, as the Secretary in his interpretive regulations has recognized (see 29 C.F.R. § 452.36, 452.37(b), 452.39, 452.41, 452.42, 452.13, 452.44, 452.47, 452.43, 452.50), the union context may render reasonable rules which either have no parallel in the context of the general electorate or would not be reasonable in that context. Conversely, rules reasonable with respect to elections for public office may not be so with regard to union office.

Further evidence that Congress did not intend to invalidate as unreasonable meeting attendance rules may be gleaned from the fact that international unions representing about one in five union members in a Department of Labor study imposed or expressly permitted such requirements for candidacy for local union office at the time of the Act. (See, Department of Labor, *Union Constitutions and the Election of Local Union Officers* 12 (1965).) By 1964, international unions representing about one third of such members imposed or expressly permitted such requirements. Since there is not a word in the legislative history suggesting dissatisfaction with these rules, and since Congress legislated to prevent "existing evils" perceived as "confined to a few unions," (S. Rep. No. 187, 86th Cong., 1st Sess., 5), Congress may not be presumed to have regarded as facially invalid regulations included in a large number of constitutions of major unions. To paraphrase *Musicians* v. *Wittstein*, 379 U.S. 171, 78: "In light of the fact that then as now many large unions had provisions for [meeting] attendance rules," it is very clear that [such rules were] not thought to be one of the abuses or forms of misgovernment." In contrast, the *Hotel Employees* opinion noted that the by-law in

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For example, we would expect that residence in a particular place for a given length of time would *not* be a reasonable union rule for candidates in the ordinary circumstance, since union affairs ordinarily concern the work place, not the home.

However, the fact that almost all states and the framers of the federal Constitution deemed necessary some limitations on candidacy designed to assure prior involvement with the relevant body politic, but at the same time differed upon the precise requirements imposed toward this end, surely indicates that a varient on the same theme reasonably adapted to the peculiar needs of unions is not inconsistent with fundamental notions of democracy.



question there was "virtually unique." (391 U.S. at 505.) Therefore, unless a meeting attendance rule as imposed or applied can be shown to be substantially more onerous than required to achieve its goals, it should be approved as the paradigm of the kind of rule permitted by § 401(e).

(c.) Recognition that meeting attendance rules must be regarded as presumptively valid does not, of course, derogate from the possibility that they can, combined with other factors present in certain circumstances, operates such that even an interested union member could not meet the requirement. For example, the excuse provisions could be so narrow as to disqualify members for whom compliance would be impossible; the length, time, frequency or location of the meeting could, similarly, render it quite difficult for most members to attend; or the number of meetings which must be attended within a particular time span could be such that, given the ordinary press of daily work, even a member committed to full participation in union affiairs would not ordinarily be able to attend the requisite number of meetings.

Thus, the Secretary could, in our opinion, consistently with § 401(e) set out guidelines delineating the *abuses* of meeting attendance rules which could render them unreasonable. In this case, however, the Secretary has not pointed to any particular reason why this meeting attendance rule, or the circumstances in which it was applied, rendered compliance with the standard of behavior prescribed beyond the means of any union member. Rather, both the Secretary and the Court of Appeals point to the percentage of members who did not choose to qualify as making manifest the rule's unreasonableness. We regard this "effects"

approach as entirely impermissible in the present context. In the following section, we explain why this test, although sensible in the *Hotel Employees* situation, the only context in which this Court has applied it, is entirely unworkable and at odds with the manifest purposes of § 401(e) when applied to a rule like the present one which imposes not an insuperable barrier to candidacy but a standard of behavior which can be met by members choosing to do so.

## II

The Court of Appeals attributed controlling significance to one sentence of the *Hotel Employees* opinion: "Plainly, given the objective of Title IV, a candidacy limitation which renders 93 percent of union members ineligible for office can hardly be a 'reasonable qualification.'" (391 U.S., at 502.) For, the court below, after quoting that sentence, stated:

> "Here the meeting attendance rule disqualified 96.5 percent of the Local Union's membership from office, so that it cannot be deemed a reasonable qualification either. We need not decide whether the 18 of 36 rule is *per se* unreasonable because its effect of servely restricting the number of potential candidates for union office shows it to be clearly unreasonable in this case * * * [I]f a very high percentage of the membership is disqualified from seeking union office by a rule, as was the case here, that fact alone may justify a finding that the rule is unreasonable." (520 F.2d 516, 519-520.)[12]

[12] The Court of Appeals did devote some discussion to the rule apart from its effects, 520 F.2d at 520-521. However, in view of the sentences quoted in the text, there is no indication whatever that it determined the rule unreasonable entirely apart from its effect, or that it would adhere to its judgment on the basis of the three-part test we deem proper.



We cannot agree, however, that the Court in *Hotel Employees* held that whenever a substantial percentage of members is not eligible, the union's qualification rule is *per se* unreasonable.

As applied to a rule such as that in *Hotel Employees*, the test is entirely consistent with the Act. For, in *Hotel Employees* the effect of disqualifying a large proportion of the membership was inherent in the structure of the rule itself, since an absolute bar to eligibility was created. Therefore, the general effect was predictable at the time the rule was adopted, although of course the precise number of members who would qualify was not certain. Further, the effect in question was a *permanent* bar to holding certain offices unless an event outside the direct control of the member occurred. While Congress may have been willing to tolerate rules which rendered permanently and necessarily disqualified to hold office a few union members, it is reasonable to conclude that it did not intend to place its imprimatur upon rules which on their face deprived most of the potential opposition of *all* opportunity to seek to unseat incumbents.

To sanction an effects test with regard to rules which present a fair opportunity for every member who wishes to do so to qualify for candidacy would be an entirely different matter. As noted above, such rules, when in furtherance of a legitimate objective and not unduly onerous are precisely the sort of candidacy qualifications which Congress intended to permit. Yet, the test forwarded by the Secretary and adopted by the Court of Appeals would